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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Globe Union Industrial Corp.

Serial No. 76597662

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John T. Lincoski, Trademark Examining Attorney, Law Office 113 (Odette Bonnet, Managing Attorney).¹

Before Seeherman, Kuhlke and Cataldo, Administrative Trademark Judges.

Opinion by Seeherman, Administrative Trademark Judge:

Globe Union Industrial Corp. has appealed the final refusal of the Trademark Examining Attorney to register TIBURON in standard character form as a trademark for the following goods:

Plumbing fixtures, namely faucets,
spray spouts, shower heads, toilets,

¹ This Examining Attorney took over responsibility for the application at the time of the preparation and filing of the Examiner's brief.

bidets, bathtubs, whirlpool tubs, sinks, water closets, shower receptors, shower arm [sic], lavatory tops and plumbing fittings, namely traps, cocks, bibs and valves (Class 11) and

Bathroom accessories, namely towel rings, towel rails, towel bars, washbowls, soap dishes, non-metal robe hooks, toothpaste holders, tumbler/toothbrush holders, cup holders, toilet paper boxes, toilet paper holders and soap boxes, wicker baskets, soap dispenser, basins (Class 21).²

Applicant has stated that "the English translation of TIBURON is shark."

Registration has been refused pursuant to Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d), on the ground that applicant's mark, when applied to its identified goods, so resembles the registered mark TIBERON TILEWORKS, with TILEWORKS disclaimed, for "ceramic field wall, floor, border, and counter tiles,"³ that it is likely to cause confusion or mistake or to deceive.⁴

² Application Serial No. 76597662, filed June 16, 2004, and asserting first use anywhere on May 10, 2004 and first use in commerce on May 15, 2004.

³ Registration No. 2799749, issued December 30, 2003.

⁴ In the final Office action the Examining Attorney also issued a final refusal based on Registration No. 2252502 for TIBURON for furniture. However, this registration was cancelled because of the registrant's failure to file a Section 8 affidavit of use; in his brief the Examining Attorney withdrew the refusal on this basis.

Applicant and the Examining Attorney have filed briefs. An oral hearing was not requested.

Our determination of the issue of likelihood of confusion is based on an analysis of all of the probative facts in evidence that are relevant to the factors set forth in *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). See also, *In re Majestic Distilling Co., Inc.*, 315 F.3d 1311, 65 USPQ2d 1201 (Fed. Cir. 2003). In any likelihood of confusion analysis, two key considerations are the similarities between the marks and the similarities between the goods and/or services. See *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976). See also, *In re Dixie Restaurants Inc.*, 105 F.3d 1405, 41 USPQ2d 1531 (Fed. Cir. 1997).

The first factor listed in the du Pont case is the similarity of the marks. The marks at issue here, TIBURON and TIBERON TILEWORKS, are extremely similar. Although applicant spells TIBURON with a "U," and the registrant's mark is spelled with an "E," consumers are not likely to note or remember this difference in the fifth letter of each word, a difference that would not affect pronunciation. Under actual marketing conditions, consumers do not necessarily have the luxury of making

side-by-side comparisons between marks, and must rely upon their imperfect recollections. *Dassler KG v. Roller Derby Skate Corporation*, 206 USPQ 255 (TTAB 1980). As for the presence of TILEWORKS in the registered mark, this term, which has been disclaimed, is obviously descriptive. It is a well-established principle that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, there is nothing improper in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided the ultimate conclusion rests on a consideration of the marks in their entireties. In *re National Data Corp.*, 753 F.2d 1056, 224 USPQ 749, 751 (Fed. Cir. 1985). In view of the descriptive nature of the word TILEWORKS, it has virtually no source-indicating significance, and is entitled to less weight in the likelihood of confusion analysis. In fact, consumers who are familiar with the mark TIBERON TILEWORKS for use on tiles, and who then see the mark TIBURON used on non-tile items, are likely to assume that the owner of the TIBURON TILEWORKS mark has simply omitted TILEWORKS when using the mark for other goods. In other words, they will view both marks as variations of each other, but both indicating a single source. Thus, despite the fact that the registrant's mark includes the word TILEWORKS, TIBURON and

TIBERON TILEWORKS are similar in appearance, pronunciation, connotation and commercial impression. This factor favors a finding of likelihood of confusion.

As for the goods, they are clearly different in their nature. However, it is not necessary that the goods of the parties be similar or competitive, or even that they move in the same channels of trade, to support a holding of likelihood of confusion. It is sufficient that the respective goods are related in some manner, and/or that the conditions and activities surrounding the marketing of the goods are such that they would or could be encountered by the same persons under circumstances that could, because of the similarity of the marks, give rise to the mistaken belief that they originate from the same producer. In re International Telephone & Telegraph Corp., 197 USPQ 910, 911 (TTAB 1978).

In this connection, the Examining Attorney has made of record a number of third-party registrations which show that various entities have adopted a single mark for goods that are identified in both applicant's application and the cited registration. See, for example, Registration No. 2377378 for, inter alia, faucet spouts, faucet handles, sinks, basins, toilets, bidets, bathroom accessories including towel bars, toilet paper holders and soap dishes,

and ceramic tiles; Registration No.2647789 for, inter alia, sinks, faucets, bathroom fixtures and accessories including soap dishes, toilet paper holders and towel bars, and non-metal floor tiles; Registration No. 2812863 for, inter alia, bathroom sinks, soap holders, towel racks, toilet tissue holders, and non-metal tiles for walls and floors; and Registration No. 2651014 for, inter alia, bathtubs, toilet bowls, faucets, showerheads, towel rings, towel rails, toilet roll holders and ceramic wall, counter and floor tiles. Third-party registrations which individually cover a number of different items and which are based on use in commerce serve to suggest that the listed goods and/or services are of a type which may emanate from a single source. See *In re Albert Trostel & Sons Co.*, 29 USPQ2d 1783 (TTAB 1993).

In addition, the Examining Attorney submitted evidence from Internet websites that shows tiles and plumbing items may be sold through the same channels of trade. In particular, the website of Nancy DeYoung Studio, www.nancydeyoung.com, advertises "hand painted ceramic tile and decorative home accessories, including a bathroom sink, while the website for Tierra y Fuego, www.tierrayfuego.com, features "Mexican Talavera Sink and Tiles." Other websites advertise tiles used in bathroom settings, showing the

complementary nature of tiles and bathroom fixtures. Certainly tiles and the various plumbing fixture and bathroom accessories identified in applicant's application could be purchased as part of a bathroom renovation project, such that the goods would be purchased at the same time, to be used together.

The foregoing evidence demonstrates the related nature of the goods, and this du Pont factor, as well as the factor of the similarity of trade channels, also favor a finding of likelihood of confusion.

The final factor discussed by applicant and the Examining Attorney is that of the conditions of sale. Applicant asserts that the registrant's goods would be "significant purchases by highly sophisticated persons," and that neither the purchase of applicant's goods nor those of the registrant would be impulse-type purchases. Brief, p. 7. However, there is no evidence that either applicant's or the registrant's goods would be purchased only by highly sophisticated persons. Although certain of these goods will generally be installed by professionals, the purchases themselves, and the purchasing decisions, are likely to be made by the ultimate consumers, who will not have a particular expertise or sophistication about tiles or about bathroom fixtures and accessories. Moreover, in

view of the evidence of third-party registrations showing that a single mark has been adopted for both tiles, bathroom fixtures and bathroom accessories, even people who work in this field may well think that these goods could emanate from a single source. As for applicant's argument that neither applicant's goods nor those of the registrant would be purchased on impulse, we are not persuaded by this argument. Certainly some of applicant's goods, including towel rings, soap dishes, robe hooks, toothbrush holders and toilet paper holders, could be the subject of an impulse purchase. More importantly, even if some degree of care were exhibited in making the purchasing decision, the marks TIBURON and TIBERON TILEWORKS are so similar that even careful purchasers are likely to assume that the marks identify goods emanating from a single source.

Decision: The refusal of registration is affirmed.